

After reviewing the evidentiary record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

(1) The Appeals Board concludes that the Administrative Law Judge's Award entitling the claimant to a fourteen percent (14%) work disability is appropriate based on the credible evidence in the record. As to this issue, the Appeals Board finds that the Administrative Law Judge's findings of fact and conclusions of law are appropriate, supported by the record and are hereby adopted by the Appeals Board for purposes of this review.

The Administrative Law Judge found that the claimant is entitled to a fourteen percent (14%) work disability based on the testimony of the respondent's vocational rehabilitation expert, Karen Crist Terrill. Ms. Terrill opined, utilizing the permanent restrictions of the two (2) physicians that testified in this case, Dr. Robert Eyster, the treating physician, and Dr. Sharon McKinney, that claimant had lost twenty-eight percent (28%) of her ability to perform work in the open labor market as a result of her work-related injuries. Ms. Terrill opined claimant had not lost any of her ability to earn a comparable wage. The Administrative Law Judge then averaged claimant's labor market loss of twenty-eight percent (28%) with the comparable wage loss of zero percent (0%), as approved in the case of Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990), to find a fourteen percent (14%) work disability. The Administrative Law Judge awarded the fourteen percent (14%) work disability as it exceeded the Administrative Law Judge's functional impairment finding of four and one-half percent (4½%). See K.S.A. 1990 Supp. 44-510e(a).

Although the claimant was unemployed at the time of the regular hearing, the Administrative Law Judge still found that she had the ability to earn a comparable wage. The Administrative Law Judge reasoned that after the respondent terminated the claimant, she successfully completed a vocational rehabilitation plan provided and paid for by the respondent. This plan included payment of temporary total disability benefits to claimant during the pendency of the plan which qualified her for general office work. The general office work training provided job opportunities within the permanent restrictions assigned by Dr. Eyster and Dr. McKinney. Both Karen Terrill, the vocational rehabilitation expert, and Dan Goldstein, the senior vocational rehabilitation counsellor who developed claimant's vocational rehabilitation plan, testified that due to the completion of the vocational rehabilitation plan, claimant now had the ability to obtain employment in the Wichita labor market area as a general office worker and earning comparable wage. Ms. Terrill testified that general office jobs were available for the claimant that would provide her with fringe benefits comparable to the benefits she received when she worked for the respondent. The Administrative Law Judge adopted the opinions of Ms. Terrill and Mr. Goldstein and found that the claimant had not lost any ability to earn comparable wages because she had successfully completed a vocational rehabilitation plan. The Appeals Board agrees with this conclusion and finds that the greater weight of the credible evidence establishes that the claimant has the ability to earn comparable wages taking into consideration her education, training, experience and capacity for rehabilitation. See K.S.A. 1990 Supp. 44-510e(a).

(2) The remaining issue is whether the Administrative Law Judge's Award contained the correct calculation of temporary total disability weekly benefits. The parties stipulated that the claimant's average weekly wage without fringe benefits was \$271.15 per week. The employer's cost of fringe benefits amounted to \$30.64 per week for an average weekly wage with fringe benefits in the amount of \$301.79. Accordingly, the temporary total disability weekly rate without fringe benefits would be \$180.78, and with fringe benefits would be \$201.20. Also, the parties agreed that the respondent had paid 49.88 weeks of

temporary total disability compensation in the total amount of \$6,769.96. The Administrative Law Judge awarded the claimant 49.88 weeks of temporary total disability benefits at the rate of \$201.27 per week or \$10,035.85. During oral argument before the Appeals Board and also in respondent's submission letter submitted to the Administrative Law Judge, the respondent specifically indicated claimant's fringe benefits were terminated when she was terminated by the respondent on January 20, 1992. Accordingly, the Appeals Board finds that the evidentiary record established that claimant was off work because of her accidental injury that occurred on June 26, 1991 from June 27, 1991 until she returned to light duty on August 24, 1991. Claimant also participated in a vocational rehabilitation assessment and plan from April 21, 1992 through January 20, 1993. Taking into consideration that claimant's fringe benefits were terminated on January 20, 1992, claimant would have been entitled to temporary total disability weekly benefits from June 27, 1991 through August 23, 1991 of 8.29 weeks at \$180.78 per week plus temporary total disability benefits from April 21, 1992 through January 20, 1993 of 39.29 weeks at a weekly rate of \$201.20 for a total of \$9,403.82.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated May 16, 1994, should be and is hereby, modified as follows:

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY ENTERED** in favor of the claimant, Rhonda E. Fleming, and against the respondent, Wichita State University, and its insurance carrier, Kansas State Self Insurance Fund, for an accidental injury which occurred on June 26, 1991.

Claimant is entitled to 8.29 weeks of temporary total disability at the rate of \$180.78 per week or \$1,498.67 and 39.29 weeks of temporary total disability at the rate of \$201.20 per week or \$7,905.15 for a total of \$9,403.82, followed by 367.42 weeks at a rate of \$28.17 per week or \$10,350.22 for a 14% permanent partial general body disability, making a total award of \$19,754.04.

As of October 20, 1995, there is due and owing claimant 8.29 weeks of temporary total disability compensation at the rate of \$180.78 per week or \$1,498.67, followed by 39.29 weeks of temporary total disability compensation at the rate of \$201.20 per week in the sum of \$7,905.15 and 177.71 weeks of permanent partial disability compensation at the rate of \$28.17 in the sum of \$5,006.09 for a total of \$14,409.91 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$5,344.13 is to be paid for 189.71 weeks at the rate of \$28.17 per week, until fully paid or further order of the Director.

All other findings and orders of the Administrative Law Judge in his Award are adopted and incorporated herein by the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James P. Johnston, Wichita, Kansas  
Jeffery R. Brewer, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director